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SOCIETY OF BRITISH COLUMBIA

Fact Sheet

March 2013

Mental Illness and the Law

Most people in society are able to cope with daily life. However, there is a population who lack stability, often having alterations in thinking, mood, or behavior, along with high levels of distress. Some of these individuals will eventually be diagnosed by a psychiatrist with a mental illness.

Annually, approximately 1 in 5 British Columbians will suffer from a form of mental illness and/or substance abuse disorder that will affect their daily lives (BC Ministry of Health 2010). Across Canada, the same rate exists, with 20% of the population facing a mental illness in their lifetime (Public Health Agency of Canada).

Individuals with mental disorders face daily challenges that can get in the way of relationships, leading to hardships in finding jobs and maintaining social relationships. Some individuals are able to cope with their mental disorder affecting part of their life, but others are in constant battle with their disorder in every aspect of their life.

The mentally ill are over-represented in the criminal justice system in general and in the correctional system in particular when compared to the general population. The 2012 report from the Office of the Correctional Investigator stated that more than 45% of the total male inmate population and 69% of the female inmate population received mental health care services in 2010-2011.

United Nation's Resolution

"All persons with a mental illness ... shall be treated with humanity and respect for the inherent dignity of the human person" (UN Resolution 46/119).

Section 2 of the Criminal Code of Canada defines a mental disorder a "disease of the mind", including any illness, disorder or abnormal condition which impairs the human mind and its functioning.

Concurrent Disorders—Individuals suffering from both a mental illness and substance abuse disorder at the same time. Also called "Dual Diagnosis".

Common Types of Disorders

- Mood Disorders:
  - Bipolar Disorder
  - Depression
- Substance Abuse Disorder
- Personality Disorders
- Schizophrenia
- Anxiety Disorders:
  - Obsessive Compulsive Disorder
  - Post Traumatic Stress Disorder
  - Generalized Anxiety
  - Panic Disorder
  - Specific Phobias
  - Social Anxiety

Anxiety disorders are most prevalent, believed to affect 12% of the Canadian population, with mood disorders affecting 9% and schizophrenia, 1% (Parliament of Canada, 2005).

In developed countries, major depression, bipolar disorder, schizophrenia, and obsessive compulsive disorder are 4 of the 10 leading causes of disability (WHO).

jhsbc-fs05-pe (03/2013)

Determining Criminal Responsibility

Fitness to Stand Trial

Canadian law takes the approach that it would be unjust to try an accused who could not participate in the trial due to a mental illness. In order to assure the accused is able to take part in a trial, the courts must first determine whether the accused is "fit to stand trial" or "unfit to stand trial" (UST). Section 2 of the Criminal Code of Canada defines "unfit to stand trial" as, when due to a mental disorder, the accused is not able to:

- understand the nature or purpose of the trial
- communicate with counsel
- understand the possible consequences that could come from the trial

This section of the Criminal Code only addresses the mental state of the accused at the time of trial. The standards for determining fitness come from the case of R vs. Taylor and R vs. Whittle, where it was determined that the accused only needed minimal cognitive capacity to meet the requirements of the definition.

If the accused is found unfit, they will be placed in a psychiatric hospital until found fit. Once the individual is found fit, the trial will be scheduled.

Not criminally responsible on account of mental disorder (NCRMD)

When a person is accused of a crime, but may be suffering from a mental disorder, a defence of not criminally responsible on account of mental disorder (NCRMD) can be raised in court. This defense is to protect those, under the law, who have a committed a crime with no criminal intent at the time of commission.

An accused can be found to be "fit to stand trial" and still be found "NCRMD". If an accused is determined to be fit to stand trial and raises the NCRMD defense, they must meet the criteria set out in Section 16(1) of the Criminal Code. These are:

- They were suffering from a mental disorder at the time of the offence
- That the mental disorder rendered the person incapable of appreciating the nature and quality of the act or of knowing that it was wrong

Prior to 1992, if someone was found NCRMD, Section 542 of the Criminal Code mandated that the individual be held in custody for an indefinite length of time. The case of R vs. Swain in 1991 ruled that section 542 violated the Charter of Rights and Freedoms. With the proclamation of Bill C-30 in 1992, a review board is used to determine appropriate restrictions for the individual. Under Section 672 of the Criminal Code, the review board considers: the safety of the individual and others, the type of mental disorder, and if the individual can reintegrate into society.

The 1999 case of R vs. Winko determined that accused can only be detained if there is a significant risk of psychological or physical harm to the public, which must be proved by the review board. Based on this analysis, the review board issues one of the following:

- An absolute discharge (will be completely discharged with no restrictions)
- A conditional discharge (will be released with conditions they must follow)
- A custody order at a psychiatric facility (Stats Can)

Provisions of Sentencing

The mental state of an individual can have an impact on the sentence received, even when found criminally responsible for the crime. For example, in R vs. Tremblay, 2006, the court stated the defendant, although found criminally responsible, should be given a lesser sentence due to the influence of a serious mental disorder. The same was determined in R vs. Knoblauch, where the mental state of the accused was an influential factor in sentencing. The ability to alter a sentence based on certain characteristics of the individual was introduced in Bill C-41, passed by the government of Canada in 1995. Bill C-41 amended the sentencing provisions of the Criminal Code and introduced conditional sentencing. One of the first cases to use this was R vs. Gladue, where the Aboriginal ethnicity of the accused was taken into consideration in sentencing. The goal of conditional sentencing and Bill C-41 is to consider measures other than custody when sentencing.

Mental Health Court

Individuals with mental illnesses often have difficultly proceeding through the court system as many struggle with understanding the process, rules of bail, have difficulty finding a lawyer, and are often denied bail based on their lack of stability in the community (BCCLA 2012). A Mental Health Court may provide a viable alternative. As of 2012, several pilot projects of Mental Health Courts have been established throughout Canada. These courts have the resources needed to effectively and efficiently deal this population. Toronto's Mental Health Court reports that 75% of the accused who would have been remanded in custody at a Mental Health Centre for further assessment were dealt with on the same day in the Mental Health Court. These courts are efficient because they have the appropriate resources such as specialized staff and connections to services readily available to address each case.

Studies in the US (Mental Health America 2009) have shown that Mental Health Courts provide both financial benefits and treatment benefits. Diverting the mentally ill in to treatment rather than the criminal justice system has shown to not only reduce overall costs to the community but also provide an increased likelihood that individuals will receive proper treatment, which reduces reoffending rates. However, some offenders are reluctant to become involved in the mental health court process due to the presumed stigma for participating, or due to an unwillingness to participate in treatment, and choose the criminal justice system instead.

The Mental Health Act of BC

The purpose of the BC Mental Health Act is to ensure "the treatment of the mentally disordered who need protection and care by providing the authority, criteria and procedures for involuntary admission and treatment" (BC Supreme Court decision [McCorkell v. Riverview Hospital] 1993). In 2003, there were approximately 8,000 involuntary admissions (BC Ministry of Health 2005).

Voluntary Admission

Under the Mental Health Act, anyone 16 years of age or older can ask to be admitted to a psychiatric unit or hospital for treatment of a mental health condition. Any person under the age of 16 or who is unable to consent for themselves may have consent provided on their behalf by a parent or guardian. If a voluntary patient decides to leave the facility, they can, unless the doctor thinks they are a danger to themselves or others. The patient may have to sign a "Discharge against Medical Advice" form.

Involuntary Admission

Section 22 of the Mental Health Act lays out the foundation for admitting someone involuntarily. A person can become an involuntary patient through:

- **A Medical Certificate**. – issued by a doctor who believes the individual has a mental disorder, and requires treatment and care to protect them or society from further harm
- **A court order** – issued by the court when someone applies for an individual to be hospitalized. The court can issue a warrant for the police to hospitalize the individual.
- **The police**—In an emergency if family or health professionals believe the person needs to be assessed and is a danger, the police will bring the individual to a doctor to be assessed.

Involuntary patients are usually treated without giving informed consent, as they are often unaware that they need treatment. These patients cannot leave the hospital alone, unless discharged. "A patient can be discharged when the Medical Certificate expires or prior to expiry. This can occur:

- if the patient and physician agree the patient can become a voluntary patient; or
- if the physician is of the opinion the patient has improved and no longer meets the criteria for involuntary status; or
- on an order of a Review Panel (with the physician's consent, the patient may be admitted as a voluntary patient); or
- on an order of the court (with the physician's consent, the patient may be admitted as a voluntary patient)" (BC Ministry of Health 2005).

Current Struggles with Mental Illness

Since the 1960s, there has been a worldwide shift from providing centralized mental health care in mental health institutions to providing de-centralized mental health care in the community. From 1959 to 1976, the number of beds in Canadian mental hospitals or psychiatric units decreased from 65,000 to 21,000 (CAD Journal of Psychiatry). In BC's Riverview Hospital alone, the number of patients decreased from over 2500 to 1100 patients between 1968 and 1978.

> *"The government over the years left too many mentally ill people to fend for themselves without the community support and affordable housing they require."*
> *Premier Gordon Campbell*

Although plans emphasized the need to reallocate both the funding provided to large mental health institutions as well as the services provided by these institutions to community services before moving patients out in to the community, the reallocation of funding has fallen short of expectations. This lack of funding for community-based mental health services has led to an overburdening of other community-based services trying to assist this population - many of which do not have either the funding or the expertise to effectively deal with them.

In spite of the goal of deinstitutionalization being to increase liberty and community engagement for those with mental disorders, one of the results has been that individuals with mental disorders are now over-represented in the criminal justice system. Across Canada, 20% of the population will face a mental illness in their lifetime (Public Health Agency of Canada), but as the Correctional Investigator stated in his 2012 annual report, 45% of the total male inmate population and 69% of the female inmate population in the federal correctional system received mental health care services in 2010-2011 alone. From 1997 to 2008, those with mental health needs recognized at prison admission doubled, and those requiring a psychiatric follow up was to 36% as of 2012. CSC reported in 2010/11, 9200 out of the 20,233 male offenders to go through the federal system received Institutional Mental Health Care services. Individuals with mental disorders are also over-represented in the provincial corrections system. In 2000, 29% of the total inmate population were classified as mentally disordered offenders (Hall and Weaver 2008).

Without proper treatment and care, these individuals are much more likely to behave in ways that make them difficult to manage in a correctional setting, behaviors such as withdrawal, self-harm, violence and the inability to follow orders (Correctional Investigator 2012). CSC is in the process of increasing specialized services and staff to more effectively treat and support this population. Computerized mental health screening is now part of the admissions process and current statistics indicate that 62% of offenders entering a federal penitentiary are "flagged" as requiring a follow-up mental health assessment or service (Correctional Investigator 2012). Still, mentally disordered offenders place a huge strain on the resources of correctional institutions, as well as on the staff, particularly the line staff who deal with them on a daily basis.

As was reported in the Times Colonist (Feb, 2008),

"Premier Gordon Campbell identified the problem and solutions in 2006. He told municipal leaders from across B.C. that the effort to move the mentally ill out of institutions was a 'failed experiment.' The plan was based on continued support for patients in the community, which was never provided.

> 'The government over the years left too many mentally ill people to fend for themselves without the community support and affordable housing they require,' he said."

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